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CLERK U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C §§ 1983

Name SMITH RICK P
(Last) (First) (Initial)

Prisoner Number T-98778

Institutional Address SAN QUENTIN STATE PRISON

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LICK P. SMITH

(Enter the full name of plaintiff in this action.)

vs.

ROBERT L. AYERS, JR.

M. MORROW

SGT. HENSON

CRAFT

(Enter the full name of the defendant(s) in this action)

CV 08

Case No. **0716**
(To be provided by the Clerk of Court)

**COMPLAINT UNDER THE
CIVIL RIGHTS ACT,
Title 42 U.S.C § 1983**

E-filing

**WHA
(PR)**

[All questions on this complaint form must be answered in order for your action to proceed.]

I. Exhaustion of Administrative Remedies.

[Note: You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.]

A. Place of present confinement SAN QUENTIN

B. Is there a grievance procedure in this institution?

YES ☒ NO ()

C. Did you present the facts in your complaint for review through the grievance procedure?

YES ☒ NO ()

D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue a certain level of appeal, explain why.

COMPLAINT

08-716 WHA

1 1. Informal appeal _____

2 _____

3 _____

4 2. First formal level _____

5 _____

6 _____

7 3. Second formal level _____

8 _____

9 _____

10 4. Third formal level _____

11 _____

12 _____

13 E. Is the last level to which you appealed the highest level of appeal available to

14 you?

15 YES () NO ()

16 F. If you did not present your claim for review through the grievance procedure,

17 explain why. BOX WILL BE SENT AS SOON

18 AS IT IS RETURNED FROM

19 SACRAMENTO, CHIEF, INMATE APPEALS

20 II. Parties.

21 A. Write your name and your present address. Do the same for additional plaintiffs,

22 if any.

23 ROCK SMITH T-98778

24 S.O.S.P. 3-C-8

25 SAN QUENTIN, CA. 94974

26 B. Write the full name of each defendant, his or her official position, and his or her

27 place of employment.

28 ROBERT L. AYERS, JR. WARDEN

SAN QUENTIN STATE PRISON

1 M. MORROW, SGT. HENSON, CRAFT
2 JOHNSON, STEWART, M. FRANK,
3 J. DGAZIO, M. PAYNE, CONERLY, SGT LEE
4 SELENTINO, PRADO, COLLINS, SGT BRADFORD
5 MARGATE, STEELE

III. Statement of Claim.

6 State here as briefly as possible the facts of your case. Be sure to describe how each
7 defendant is involved and to include dates, when possible. Do not give any legal arguments or
8 cite any cases or statutes. If you have more than one claim, each claim should be set forth in a
9 separate numbered paragraph.

10 SEE LETTER ATTACHED (8) EIGHT PAGE
11 DOCUMENT
12
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23 IV. Relief.

24 Your complaint cannot go forward unless you request specific relief. State briefly exactly
25 what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

26 ALL ADDITIONAL RELIEF THIS
27 COURT DEEMS JUST, PROPER AND
28 EQUITABLE

1 PLAINTIFF DEMANDS JULY TRIAL
2 ON ALL ISSUES TRIABLE BY JURY
3
4

5 I declare under penalty of perjury that the foregoing is true and correct.
6

7 Signed this 16th day of JANUARY, 20 08
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(Plaintiff's signature)
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RTCK P. SMITH T-78778 1

S.R.E.P. 3-C-08

SAN QUENTIN, CA. 94974

STATEMENT OF CLAIM

HTC IS TO DOCUMENT THE ACTIONS OF
THE NAMED CORRECTIONAL OFFICERS
WHILE ACTING UNDER COLOR OF STATE
LAW.

DEFENDANT, ROBERT L. AVERS, SR. IS NAMED
AS WARDEN OF SAN QUENTIN. HE IS LEGALLY
RESPONSIBLE FOR THE OPERATION OF SAN
QUENTIN AND FOR THE WELFARE OF ALL
THE INMATES OF THAT PRISON.

THE EIGHTH AMENDMENT'S PROHIBITION OF
CRUEL AND UNUSUAL PUNISHMENT ALSO
PROTECTS PLAINTIFF'S RIGHT TO LIFE
AND DECENT CONDITIONS IN PRISON.

PRISON CONDITIONS AND PRACTICES CANNOT REPEAT
THAT OF THE MINIMAL JUSTICE MEASURE
OF STATE. NECESSARY TO HAVE SOME AND
SOME FALL IN WITH CARCERY

2

THERE IS A STRONG LIKELIHOOD OF PSYCHOLOGICAL DAMAGE DUE TO THE DENIAL OF EXERCISE PRIVILEGES FOR 90 DAYS.

DELANGY V. DETELLA, 256 F.3D 679 (7th Cir. 2001)

CONTINUING INTERFERENCE TO MENTAL HEALTH AS WELL AS PHYSICAL NEEDS TO BE SATISFIED

PLAINTIFF STATES THAT FOR 2 MONTHS HE WAS GIVEN NO VAILD BECAUSE HE WOULD NOT BACK OUT OF HIS CELL.

PLAINTIFF STATES THAT HE WAS GIVEN 3 SHOWERS IN 4 MONTHS BECAUSE HE WOULD NOT BACK OUT OF HIS CELL.

PLAINTIFF STATES THAT HE HAS NOT BEEN GIVEN SOLAR SINCE 11-12-07 TO 1-4-08

PLAINTIFF STATES THAT HE CONTINUES TO BE WAKE UP AT NIGHT FOR NO REASON

WHEN THE STATE TRANSGRESSES THESE LIMITS IT TRANSGRESSES THE EIGHTH AMENDMENT.

3

10-17 GIVEN S.H.U. TANK FOR BATTERY ON
AN INMATE BY I.C.C. AND HELD IN HOLD-
ING CAGE BY C/O M. MORROW, SGT. HENSON
AND C/O CRAFT FOR MORE THAN 1 HR
WITH HANDS CUFFED BEHIND MY BACK
TOLD I MUST BACK OUT OR I DO NOT
EXIT.

10-19 C/O JOHNSON TOLD ME I MUST BACK
OUT OF MY CELL OR I DONT SHOWER

10-22 C/O STEWART WAKE ME UP BANGING
ON MY CELL DOOR TELLS ME HE HAS TO
MAKE SURE IM ALIVE.

10-24 C/O STEWART 1ST WATCH RETURNS MY
MAIL AND THROWS IT ON MY FLOOR NO
EXPLANATION

10-28 C/O M. FRATILE AND S. DEFAZIO TELL
ME I MUST "STAY OUT" OR I DONT SHOWER
WILL NOT GIVE ME A 602.

11-6 C/O M. PAYNE AND CONERLY TELL ME TO BACK OUT OR I DONT SHOWER. NO ONE ELSE ON THE TIER IS GIVEN THIS TREATMENT.

11-9 NO ONE ON TIER SHOWERED

SGT. LEE GIVES ME HEARING ON 602 FOR NOT SHOWERING ME AND TELLS CONERLY THAT "I DONT COME OUT OF MY CELL UNLESS I BACK OUT". RETURNING TO CELL C/O M. FRAIRE THROWS ME INTO THE CORNER OF MY CELL WITH MY HANDS CUFFED BEHIND MY BACK AS C/O SERENTINO HOLDS MAXCE CAN POINTED AT MY FACE.

11-11 C/O DEFAZIO AGAIN TELLS ME I MUST "STRIP OUT" OR I DONT SHOWER

11-13 C/O CONERLY TELLS ME "BACK OUT OR NO SHOWER".

11-13 NO 602'S GIVEN STARTING THIS DAY BY C/O PRADO

11-16 C/O CONERLY NO SHOWER

11-18 C/O ZIMMENMAN SHOWERS ME NO PROBLEM, I EXIT CELL FACE FIRST.

11-20 C/O REED SHOWERS ME NO PROBLEM I EXIT CELL FACE FIRST

- 1-23 C/O JOHNSON AGAIN NO SHOWER
- 1-25 C/O M. FRAIRE AND J. DEFAZIO NO SHOWER
- 11-27 C/O CONERLY NO SHOWER
- 1-30 C/O CONERLY DOES NOT EVEN ASK IF IM
GOING TO SHOWER
- 12-2 4 TIMES C/O MARGATE BANGS ON MY CELL
DOOR AND WAKES ME UP TELLING ME HE HAS
TO MAKE SURE IM ALIVE
- 12-2 NO SHOWER M. FRAIRE, J. DEFAZIO
ALSO FED ON PAPER PLATE FOR NO REASON
- 2-3 C/O MARGATE AGAIN BANGS ON MY CELL
DOOR IN THE MIDDLE OF THE NIGHT WAKING
ME UP FOR NO REASON
- 12-4 C/O COLLINS WAKES ME UP ON 3RD WATCH
BANGING ON MY CELL TELLS ME IM A J-
CAT SHINES FLASH LIGHT IN MY FACE TO
PROVOKE ME.
- 12-4 NO SHOWER C/O CONERLY
- 12-7 NO SHOWER C/O CONERLY
- 12-9 NO SHOWER C/O M. FRAIRE, J. DEFAZIO
- 12-10 C/O MARGATE AGAIN BANGS ON CELL
DOOR IN THE MIDDLE OF THE NIGHT FOR
NO REASON WAKING ME UP
- 12-11 NO SHOWER C/O CONERLY

12-11 SGT. BRADFORD, C/O STEELE BANG ON MY CELL DOOR IN THE MIDDLE OF THE NIGHT TELLING ME I MUST REMOVE TOWELS AND SHEETS FROM AROUND MY BED, I TELL HIM C/O'S STEELE, MARCATE AND STEWART CONTINUE TO SHINE FLASHLIGHTS IN MY FACE WAKING ME UP THATS WHY THEY ARE THERE, I ASK BRADFORD FOR A GOZ NONE GIVEN.

12-14 JOHNSON, CONNELLY NO SHOWER

12-15 COLLINS GIVES EVERY ONE AROUND MY CELL A HATCUT NOT ME

12-18 CONNELLY NO SHOWER

C/O STEELE BANGS ON CELL WAKING ME UP NO REASON.

12-21 JOHNSON, CONNELLY NO SHOWER

12-25 CONNELLY NO SHOWER ASKED HIM FOR GOZ NONE GIVEN

1ST WATCH C/O STEELE BANGS ON CELL DOOR FOR 1 MINUTE

12-28 NO SHOWER MENDOZA, CONNELLY I ASK FOR A GOZ CONNELLY TELLS ME TO SHUT UP AND LAY DOWN

12-29 ASK MENDOZA AGAIN FOR 602
 H NO SHOWER CONNELLY 1ST WATCH
 C/O STEELE AGAIN RANGES ON CELL POOL
 FOR OVER ONE MINUTE

1-4 NO SHOWER MENDOZA, CONNELLY
 CONNELLY GIVES ME A 602

1-6 NO SHOWER DEFAZIO

1-8 NO SHOWER MENDOZA, CONNELLY
 SGT BRADFORD AGAIN WAKES ME UP FOR NO
 REASON

1-11 NO SHOWER CONNELLY

1-13 DE LEON SHOWER NO PROBLEM

1-15 DE LEON SHOWER NO PROBLEM

EXHAUSTION OF ADMINISTRATIVE REMEDIES
 REQUIREMENT WILL BE MET AS SOON AS MY
 602 IS RETURNED FROM CHIEF, INMATE
 APPEALS, SACRAMENTO, POBOX ~~942883~~ 942883, CAL.
 94283-0001

~~RE~~ PLAINTIFF CLEARLY SETS FORTH DEFENDANTS
 IN INDIVIDUAL AND STATE CAPACITY

8

PLAINTIFF CLAIMS DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FIFTH, FOURTEENTH AND EIGHTH AMENDMENT. PRISON CONDITIONS AND PRACTICES DOES GIVE RISE TO SIGNIFICANT HARDSHIP ON THE INMATE IN RELATION TO THE ORDINARY INCIDENTS OF PRISON LIFE AND THAT SIMILARLY SITUATED INMATES ARE INTENTIONALLY TREATED DIFFERENTLY BY THE STATE AND THERE IS NO RATIONAL RELATION BETWEEN THE DISSIMILAR TREATMENT AND ANY LEGITIMATE PENAL INTEREST.

TO SATISFY THE "UNDER COLOR OF LAW" REQUIREMENT ALL DEFENDANTS CONDUCT IS THE MISUSE OF POWER POSSESSED BY VIRTUE OF STATE LAW AND MADE POSSIBLE ONLY BECAUSE THE WRONG DOER IS CLOTHED WITH THE AUTHORITY OF STATE LAW.

4TH AMENDMENT CLAIM STATED BECAUSE INMATE HAS RIGHT TO BE FREE FROM STRIP SEARCH ABSENT REASONABLE SUSPICION PRISONER IS CARRYING CONTRABAND OR WEAPONS

EVEN THOUGH CERTAIN CONDITIONS MIGHT NOT BE UNCONSTITUTIONAL ON THEIR OWN THEY ADD UP TO CREATE AN OVERALL EFFECT THAT IS UNCONSTITUTIONAL

RECK P. SMITH T-98878
S.O.S.P. 3-C-8
SAN QUENTIN, CA
94974



U.S. DISTRICT COURT
450 GOLDBEN GATE AV.
SAN FRANCISCO, CA
94102



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